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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

(Hon. Thomas J. Whelan)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUNCAN D. HUNTER,

Defendant.

Case No. 18-CR-3677-W

**NOTICE OF MOTION AND MOTION  
TO STRIKE SURPLUSAGE FROM  
THE INDICTMENT**

DATE: July 1, 2019  
TIME: 10:00 a.m.  
COURTROOM: 3C  
JUDGE: Hon. Thomas J. Whelan

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT on July 1, 2019 at 10:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Thomas J. Whelan, United States District Court Judge, Courtroom 3C, located at 221 West Broadway, San Diego, California, 92101, Defendant Duncan D. Hunter hereby moves this Court to strike surplusage from indictment, specifically, paragraphs fourteen (14), fifteen (15), sixteen (16), and seventeen (17) pursuant to Criminal Rule of Federal Procedure 7(d).

1 This Motion is based on the instant Notice, Motion, and Memorandum of Points  
2 and Authorities submitted herewith, the pleadings and other matters on file in this case,  
3 and on such other and further argument and evidence as may be presented to the Court  
4 at the hearing of this matter.  
5

6 Dated: June 24, 2019

SELTZER CAPLAN McMAHON VITEK  
A Law Corporation

7 Bv: s/ Gregory A. Vega

8 Gregory A. Vega

9 Ricardo Arias

Philip B. Adams

Attorneys for Defendant. DUNCAN D. HUNTER  
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**UNITED STATES DISTRICT COURT**  
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(Hon. Thomas J. Whelan)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUNCAN D. HUNTER,

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Case No. 18-CR-3677-W

**MOTION TO STRIKE SURPLUSAGE**  
**FROM THE INDICTMENT**

Date: July 1, 2019  
 Time: 10:00 a.m.  
 Judge: Hon. Thomas J. Whelan

Defendant DUNCAN D. HUNTER (“Hunter”), by and through his attorneys,  
 Gregory A. Vega, Ricardo Arias and Philip B. Adams hereby submits this Motion to  
 Strike Surplusage from Indictment and respectfully moves this Court to strike certain  
 language, namely paragraphs fourteen (14), fifteen (15), sixteen (16), and seventeen  
 (17), from the indictment in this case as surplusage pursuant to Criminal Rule of Federal  
 Procedure 7(d). These paragraphs relate to Hunter’s “financial background” and should  
 be struck as surplusage because they contain no material information relevant to the

1 charged offenses and serve no purpose other than to prejudice the jury against Hunter by  
2 implicitly providing a motive for the alleged crimes.

### 3 **I. FACTUAL BACKGROUND**

4 Hunter is a United States Representative representing California's 50<sup>th</sup>  
5 Congressional District. Hunter was charged on August 21, 2018, in a 60 count  
6 indictment, with offenses related to violating rules of the House of Representatives  
7 ("House") and the Federal Election Commission ("FEC") on the personal use of  
8 campaign funds and related offenses involving attempts to conceal the personal use  
9 reported in FEC filings. Hunter was first elected to serve as a United States  
10 Representative in 2008, and has been re-elected 5 times, serving from January 2009 to  
11 the present. The indictment alleges Hunter used campaign funds for personal purposes  
12 over the course of a six year period (2010-2016). Count 1 charges Hunter and his wife,  
13 Margaret Hunter, with conspiracy in violation of 18 U.S.C. § 371; Counts 2-44 charge  
14 wire fraud in violation of 18 U.S.C. §§ 1343 and 2; Counts 45-57 charge false filings  
15 with the FEC in violation of 18 U.S.C. §§ 1519 and 2; and Counts 58-60 charge  
16 Prohibited Use of Campaign Contributions in violation of 52 U.S.C. §§ 30109(b) and  
17 30114(b)(1) and 18 U.S.C. § 2.

### 18 **II. ANALYSIS**

19 The Court should strike paragraphs 14, 15, 16, and 17 as surplusage because they  
20 do not set forth material information establishing any element of the charged crimes and  
21 merely contain unnecessary and prejudicial allegations designed to supply a motive for  
22 Hunter's purported offenses.

23 Federal Rules of Criminal Procedure 7(d) empowers district courts to strike  
24 surplusage from an indictment upon a defendant's motion. Fed. R. Crim. Proc. 7(d); *See*  
25 *United States v. Ramirez*, 710 F.2d 535, 544-45 (9th Cir.1983). Rule 7(d) was enacted  
26 to "introduce [] a means of protecting the defendant against immaterial or irrelevant  
27 allegations in an indictment ... which may, however, be prejudicial. Fed. R. Crim. Proc.  
28

7(d), Advisory Committee Notes, 1944 adoption; *see also Federal Practice and Procedure* § 128 (“The purpose of 7(d) is to protect the defendant against prejudicial allegations of irrelevant or immaterial facts.”) Accordingly, language within an indictment that is not essential to the charged offenses and either irrelevant or immaterial to the overall scheme alleged should be stricken as surplusage. *See United States v. Caruso*, 948 F. Supp. 382, 392 (D.N.J. 1996). Indeed, “[n]umerous decisions have recognized the power of the district court to redact from an indictment... superfluous language which unfairly prejudices the accused.” *United States v. Vastola*, 899 F.2d 211, 231 n.25 (3d Cir. 1990), *vacated on other grounds*, 497 U.S. 1001 (1990).

The district court has broad discretion in ruling on a motion to strike surplusage. *See Hearn v. San Bernardino Police Dep’t*, 530 F.3d 1124, 1132 (9th Cir. 2008); *See also United States v. Terrigno*, 838 F.2d 371, 373 (9th Cir.1988). In the Ninth Circuit, a district court may properly grant a defendant’s motion to strike surplusage from the indictment when the indictment contains “prejudicial or inflammatory allegations that are neither relevant nor material to the charges. *See e.g., United States v. Terrigno*, 838 F.2d at 373 (9th Cir.1988) (quoting *United States v. Ramirez*, 710 F.2d 535, 544-45 (9th Cir. 1983)). Furthermore, a defendant has no “obligation arising from the rules of evidence to explain that which [does] not appear to have any necessary or natural connection with the offense imputed to him.” *Williams v. United States*, 168 U.S. 382, 397 (1897)

Paragraphs 14-17 of the indictment in this case have no material or necessary connection to the charged offenses and serve no purpose other than to prejudice the jury against Hunter. These superfluous paragraphs read as follows:

14. Throughout the relevant period, Defendants DUNCAN HUNTER and MARGARET HUNTER maintained both a joint checking and joint savings account. The checking account was used as their primary bank account for paying virtually all family bills (“the HUNTER family bank account”). The HUNTERS rarely used the joint savings account and maintained a minimal balance in that account. DUNCAN HUNTER maintained separate personal checking and savings accounts into which he

1 made small monthly deposits for his own personal use ("HUNTER's  
2 personal bank accounts").

3 15. As reflected in his U.S. House of Representatives Annual Financial  
4 Disclosure Statements, DUNCAN HUNTER had less than \$1,000 in  
5 reportable assets for each of the years 2009 through 2016.

6 16. Throughout the relevant period, the HUNTERS spent substantially  
7 more than they earned. They overdrew their bank account more than 1,100  
8 times in a seven-year period resulting in approximately \$37,761 in  
9 "overdraft" and "insufficient funds" bank fees. Their credit cards were  
10 frequently charged to the credit limit, often with five-figure balances,  
11 resulting in approximately \$24,600 in finance charges, interest, and other  
12 fees related to late, over the limit, and returned payment fees.

13 17. By virtue of these delinquencies — as well as notifications of  
14 outstanding debts and overdue payments from their children's school, their  
15 family dentist, and other creditors — the HUNTERS knew that many of  
16 their desired purchases could only be made by using Campaign funds.

17 First, paragraph 14, which simply discloses the existence of “the HUNTER  
18 family bank account” and “HUNTER’s personal bank accounts,” is neither relevant nor  
19 material to the charged offenses; Hunter is no more likely to have committed the  
20 charged crimes due to the existence of these bank accounts than he would be had he  
21 kept money under his mattress. In addition, the government’s strategically worded  
22 contention that Hunter maintained separate bank accounts for “his own personal use”  
23 unduly prejudices Hunter because it suggests, incorrectly, that Hunter was hiding funds  
24 from his wife, and it sends a subliminal message to the jury that Hunter was predisposed  
25 to converting funds for his personal use.

26 Second, paragraphs 15 and 16, which allege that Hunter “had less than \$1,000 in  
27 reportable assets for each of the years 2009 through 2016” yet ran up tens of thousands  
28 of dollars in overdraft fees and credit card charges, are clearly designed to suggest that  
Hunter had a motive for committing the alleged offenses. Furthermore, these allegations  
are not relevant to any element of the charged offenses, and they are prejudicial because

1 they imply that Hunter knowingly lived beyond his means, despite ample evidence to  
2 the contrary.

3 Third, the government's conclusory allegation in paragraph 17 that because the  
4 Hunters had outstanding debts and overdue payments they "knew that many of their  
5 desired purchases could only be made by using campaign funds" is inherently  
6 speculative and prejudicial. Moreover, highlighting the cumulative amount of bank fees  
7 and finance charges incurred by the Hunters over a seven year span is prejudicial  
8 because it grossly exaggerates Hunter's actual debt at any particular moment during that  
9 time span, and it implicitly invites the jury to make improper conclusions (i.e. that  
10 Hunter was in so much debt that he must have used campaign funds for personal  
11 expenditures) based upon inflated numbers that are not relevant to the alleged offenses.

12 Therefore, paragraphs 14-17 constitute prejudicial allegations that are neither  
13 relevant nor material to the charges and should be struck from the indictment. At a  
14 minimum, the Court should strike the government's prejudicial commentary about  
15 Hunter's reportable assets and the Hunters' spending habits but permit the government  
16 to reference the accounts in paragraph 14.

### 17 **III. CONCLUSION**

18 In sum, the Court should strike paragraphs 14-17 as surplusage because they do  
19 not set forth material information relevant to any of the charged crimes and merely  
20 assert unnecessary and prejudicial allegations designed to supply a motive for Hunter's  
21 purported offenses.

22 Respectfully submitted,

23 Dated: June 24, 2019

24 SELTZER CAPLAN McMAHON VITEK  
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25 By: s/ Gregory A. Vega

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27 Philip B. Adams

28 Ricardo Arias

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